IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6415 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHANKARLAL RAJARAM SHEDGE

Versus

STATE BANK OF INDIA THRO' BRANCH MANAGER

Appearance:

1. Special Civil Application No. 6415 of 2001

MR NILESH M SHAH for Petitioner No. 1

NOTICE SERVED for Respondents No. 1-2

MR PR NANAVATI for Respondent No. 3

MR MUKESH R SHAH for Respondents No. 4-5

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 02/11/2001

ORAL JUDGEMENT

#. Rule. Mr.P.R.Nanavati and Mr.M.R.Shah waive service

of rule for respondent Nos.3 and 4 and 5 respectively. With the consent of the parties, the matter is taken up for final hearing today.

#. The petitioner has challenged the order passed by the Government dated 25.10.2000 by which it was decided not to refer the dispute for adjudication. While rejecting the prayer for referring the matter, the ground mentioned in the order is as under :

> "Badli Watchman purely on temporary basis at Dantiwada Branch of SBI for 88 days only during February, 89 to April, 90. In reference to settlement between Bank Management and All India State Bank of India Federation, the candidates who had worked on temporary basis in the Bank was called for an interview and appointment were given to the persons subject to their selection in the interview and keeping in view their seniority list. But, sh.Shedge was not selected in the interview conducted by the management. Moreover, the disputant has not submitted any documentary proofs that he had worked continuously for more than 240 days in a calender year. Hence, no dispute".

However, it is required to be noted that, at the time of submitting the failure report, the Assistant Labour Commissioner has observed in the order that the case of the workman as submitted by the union is that he was employed as Watchman with effect from February, 1988 under Dantiwada Branch of State Bank of India. He was selected for interview by the Bank Management and he continued to serve upto 30.3.1997 and his services were terminated with effect from 31.3.1997 without following the procedure of law. It was his case that, he has completed more than 240 days.

#. It is required to be noted that while declining the request for referring the matter to the appropriate Court, the reasoning given by the Government is that the petitioner has not completed 240 days. In my view, while deciding the question about making reference, it was not open for the Authority to adjudicate the matter as if the dispute is decided on merits. Whether the concerned workman has completed 240 days or not, is a question which is required to be decided by the competent Court to whom the dispute is referred. In my view, Government of India declined to refer the matter to the appropriate Court absolutely on an irrelevant ground. Reference is also required to be made to the decision of this Court in

Ahmed N.Makada Vs. Government of India and others, (2000(1) GLR 639. In that view of the matter, the aforesaid order is unsustainable.

#. The petition is, therefore, allowed. The impugned order at Annexure "B" is quashed and set aside. The appropriate Government is directed to make reference to the appropriate Court for adjudication of the dispute in question. Rule is made absolute to the above extent with no order as to costs.

(P.B.Majmudar,J)
(pathan)